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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 570

FREDERICK BLAUSTEIN, *Appellant*,

v.

CAESAR L. AIELLO, Substitute Trustee, *Appellee*.

On Appeal from the Court of Appeals of Maryland

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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Appellee's motion to dismiss asserts two reasons for that action: (1) that the decision of the Court of Appeals of Maryland rests upon adequate non-federal grounds; and (2) that there is no plausible foundation for the claim that the Courts of Maryland have invaded the exclusive jurisdiction of the United States Courts. Neither of these arguments is supported by the record:

I. The decision of the Court of Appeals of Maryland necessarily rests upon its determination of federal questions.

The argument in support of appellee's motion to dismiss this appeal makes no claim that Section 187A, Article 16, Annotated Code of Maryland, was not promptly and adequately challenged as invalid under the due process clause of the United States Constitution. Such a claim could not

be made because the Court of Appeals of Maryland (Jurisdictional Statement, Appendix A, pp. 5a, 6a) expressly overruled the appellant's claims under the due process clause. *Charleston Federal Savings & Loan Association v. Alderson*, 324 US 182, 185, 186. Nor does the appellee attempt to defend, as in accordance with the due process clause, a statute which, as does Section 187A, Article 16, Annotated Code of Maryland, forbids the court to give notice to persons whose rights are affected by the proposed action of the Court. Such an attempt would obviously be profitless in the face of this Court's unbroken holding that adequate notice is an essential element of the due process demanded by the Fourteenth Amendment. (See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 US 112; *Covey v. Town of Somers*, 351 US 141; *Walker v. Hutchinson City*, 352 US 112.)

Rather, the appellee contends that this Court should not consider this patent violation of the requirements of due process, because the decision of the Court of Appeals of Maryland rests upon an adequate non-federal ground. This ground, it is said, is the claim that the provision of the deed of trust allowing the substitution of trustees is binding upon the appellant.

There are two reasons why this argument is unsound. At the out-set, it is not clear whether the argument is that the appellant lacks standing to raise the federal question, or whether the claim is that the act of the original debtor is a waiver of appellant's constitutional rights. In either event, the question is itself one which this Court must finally determine. (See, for example, as to the claim of waiver: *Parker v. Illinois*, 333 US 571, 574, and *Davis v. O'Hara*, 206 US 314, 318, and, as to the claim of lack of standing to

sue. *McCollum* v. *Board of Education*, 333 US 203, 206, 207, and *Coleman* v. *Miller*, 307 US 433, 443, 445, 464.

A second answer lies in the fact that it was not the provision of the deed of trust which divested appellant of his property rights. It was the order of the court substituting the trustee, and the order confirming his sale of the property, both of which were necessarily pursuant to the challenged statute, which create the appearance of legal validity in the acts of the substitute trustee. The assertion by the Maryland Court that the appellant's right to claim the protection of the due process clause is not well taken, is one which this Court clearly has the power and duty to review. *Hansberry* v. *Lee*, 311 US 32; *Straub* v. *City of Bayley*, 355 US 313, 318-320; *Allied Stores of Ohio* v. *Bowers*, 358 US 522.

II. The issue as to whether the Maryland Court of Appeals, by interpreting the order of the United States District Court, has invaded the jurisdiction of that Court is a substantial federal issue.

An important issue in this case is the meaning and effect of Section 148 of the Bankruptcy Act (11 USC 547). This section, an integral part of the entire concept of corporate reorganization proceedings, differs from other stay proceedings in the Bankruptcy Act in that it is self-executing. 11 COLLIER ON BANKRUPTCY (14th Ed.), paragraph 6.12, p. 1798. Other stay proceedings do not become effective unless and until the District Court has exercised its discretion so to order. In contrast, the Section 148 stay becomes effective upon the approval of the petition for reorganization, and continues in effect until and unless the District Court exercises its discretion to terminate the stay.

The underlying issue here is the meaning of the order of the United States District Court which approved the sale

of these properties to Blaustein. (Printed Record Extract, p. E29) If the sale violated that order, it was a nullity. *Kalb* v. *Fuerstein*, 308 US 433, 438, 439.

The issue here presented is not the meaning of the order, but whether the Maryland Courts, unfamiliar with the background of the entire transaction should, in the first instance, have presumed to interpret the order of the United States District Court. As Judge Rifkin expressed it, in *In re Long Island Properties*, 40 F Supp 611, 615 (SD NY 1941), "It is of importance that the federal court be recognized as the only forum in which to litigate the validity and priority of claims to the debtor's property (excepting, in a proper case, wherein the federal court may consent to the commencement of continuation of suit elsewhere.)"

Although we submit that the interpretation of the order upon which the appellee relies would, upon a consideration of all of the background of this case, prove erroneous, we shall not debate the appellee on that issue, since such a debate is a mere evasion of the substantial question. The question is, should the issue be debated in the state courts or should it first be debated in the United States District Court? The mere invoking of the jurisdiction of any other court to hear that argument is necessarily in derogation of the bankruptcy court's exclusive jurisdiction, granted to it in pursuance of Article I, Section 8, clause 2 of the Constitution of the United States.

CONCLUSION

This case presents substantial questions as to the appellee's rights under the due process clause, and as to the extent of the jurisdiction of the bankruptcy courts of the United States. The resolution of such issues is properly

and necessarily the duty of this Court. The motion to dismiss should be over-ruled.

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